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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE
COMPANY,

Defendant and Appellant;

BAD BOYS BAIL BONDS,

Real Party in Interest and Appellant.

F075353

(Super. Ct. No. 1489891)

OPINION

APPEAL from judgments of the Superior Court of Stanislaus County. Dawna F. Reeves, Judge.

Jefferson T. Stamp for Defendant, Real Party in Interest and Appellants.

John P. Doering, County Counsel, Amanda Marie DeHart, Deputy County Counsel, for Plaintiff and Respondent.

-ooOoo-

A surety and its bail agent appeal the trial court's entry of summary judgments on the surety's forfeited bail bonds after the court denied bail agent's motions to vacate

forfeiture and exonerate bonds pursuant to Penal Code section 1305, subdivision (g).¹ Surety and bail agent contend the trial court had no jurisdiction when it entered the summary judgments. First, they contend the trial court violated section 1305.4 when it granted an extension of the appearance period, which rendered notice of the extended deadline defective and tainted all subsequent proceedings. Second, they contend their right to procedural due process required the district attorney's office to provide notice during the appearance period of its determination that extradition of the criminal defendants from Mexico was not feasible and its rationale for the determination.

We conclude the trial court's extension of the appearance period for 152 days and setting its expiration at December 14, 2016, was within the discretionary authority granted by section 1305.4 and, therefore, the court did not violate the statute. We also conclude the court's extension of the deadline to December 14, 2016, was its true intent and the surety and bail agent were explicitly notified of that date. Therefore, the notice of the extension of the appearance period was not defective.

The procedural due process argument raises a question of first impression. We concluded the three-factor balancing test adopted by the United States Supreme Court in *Mathews v. Eldridge* (1976) 424 U.S. 319, 335 (*Mathews*) provides the appropriate legal analysis for this question. Under that test, we weigh the interests of the private parties, the interests of the prosecuting agencies, and the burdens and error-prevention efficacy of the notice requirement proposed by the surety and bail agent. On balance, we conclude due process does not require prosecuting agencies to provide notice to surety and bail agents during the appearance period of (1) the agency's determination that extradition is not feasible and (2) the rationale for that determination.

We therefore affirm the summary judgments.

¹ All unlabeled statutory references are to the Penal Code.

FACTS & PROCEEDINGS

The criminal defendants who posted bail in this case are Oscar Rivera, his brother Adolfo Rivadeneyra Rivera, and their cousin Gabriel Fontes Rivadeneyra. Defendants are citizens of Mexico. They obtained social security numbers in 2004 because social security numbers are needed to obtain visas to work in the United States.

During the afternoon of July 17, 2015, defendants were working at a carnival at the Stanislaus County Fair Grounds. Adolfo was employed as a supervisor at the carnival. Oscar and Gabriel may have been working the duck-ring-toss booth. An argument arose with two customers who felt they were being cheated. At the preliminary hearing, counsel for Adolfo described the customers as drunk and insulting, which added fuel to the argument. According to counsel, the argument turned physical when one of the customers lunged at Adolfo. Counsel argued that whether Adolfo hit the customer before or after he came over the barrier was of no consequence because the law allows a person to defend himself before being physically touched by an aggressor. In short, defendants contend they were not the aggressors and were defending themselves.

In response, Deputy District Attorney John Mayne argued that “when both of the victims are on the ground getting struck and kicked, that’s no longer self-defense.” Mayne characterized the end of the confrontation as a group beatdown, noting one customer lost consciousness and the other’s eye was swollen completely shut for a couple of days.

Oscar and Gabriel were charged with felony counts of battery inflicting serious bodily injury (§ 243, subd. (d)) and assault likely to produce great bodily injury (§ 245, subd. (a)(4)), both with enhancements (§ 12022.7, subd. (a)). Adolfo was charged with one felony count of assault likely to produce great bodily injury (§ 245, subd. (a)(4)).

North River Insurance Company through its bail agent, real party in interest Bad Boys Bail Bonds (collectively, Surety), posted bail bonds on August 3, 2015, for the release of Oscar, Adolfo, and Gabriel. The bail bonds for Oscar and Gabriel were in the

amount of \$30,000 (No. T50-50522422 and No. T50-50522420). The bail bond for Adolfo was in the amount of \$50,000 (No. T50-50522423). Under the bonds, Surety was obligated to pay the amounts stated in the bonds if the defendants failed to appear for any mandatory hearings in the criminal case. The bonds also stated that if the court ordered forfeiture, “judgment may be summarily made and entered forthwith against [Surety] for the amount of its undertaking herein as provided by Sections 1305 and 1306 of the Penal Code.”

Forfeiture of Bail

On November 5, 2015, defendants failed to appear for arraignment. Based on their attendance at several previous hearings, the court excused the failure to appear, did not order forfeiture of the bail bonds, and continued the matter. On November 20, 2015, defendants again failed to appear. At the hearing, Adolfo’s attorney stated their visas had expired, and they were in Mexico working with the consulate to get the visas reissued so they could return and deal with this case. He also requested the court to stay the issuance of the bench warrants until February 1, 2016, based on his understanding that if a bench warrant were issued the visa requests would be denied and defendant would not be able to return to California. The court declined counsel’s request to stay the issuance of warrants and ordered the forfeiture of the bail bonds.

On December 15, 2015, the clerk of court mailed a notice of forfeiture to Surety for each of the three bail bonds. Accordingly, the initial 180-day appearance period, increased by an additional five days for the mailing of notice, expired on June 17, 2016.

Extension of Appearance Period

On June 17, 2016, Surety filed motions for an extension pursuant to section 1305.4. The declarations supporting the motions are described in part II.A.1., *post*. County responded to the motions by filing notices of nonappearance. The notices stated the County did not oppose the extensions and noted the extensions should be “for no longer than 180 days after the hearing on the motion.”

On July 15, 2016, a hearing was held on the motions for an extension. The discussion between the court and counsel for Surety is set forth verbatim in part II.A.2., *post*. The court granted the motions and extended the deadline for defendants to appear to December 14, 2016.

Motions to Vacate Forfeiture

On December 14, 2016, Surety filed motions to vacate the forfeiture and exonerate bail. As alternatives, the motions requested the tolling of time under section 1305, subdivision (h) or the extension of time under section 1305.4. The motions were supported by declarations from counsel for Surety and an investigator who had gone to Mexico and met with defendants.

On December 30, 2016, County filed oppositions to the motions to vacate. County argued the conditions for forfeiture relief set forth in section 1305, subdivision (g) were not satisfied. First, County asserted extradition was not feasible. Second, County argued Surety had failed to provide sufficient proof that all the elements of the statute had been met. The oppositions were supported by the declaration of Gary J. Martinez, a criminal investigator employed by the district attorney's office. Martinez was assigned to investigate the forfeiture of the bail bond posted for defendants. He reviewed identification affidavits presented by Surety in June 2016 and November 2016.

Martinez's declaration addressed the feasibility of extraditing defendants from Mexico. He obtained historical information about extradition from the Office of International Affairs and the Department of State. Mexico extradited 107 people to the United States in 2012; 54 people in 2013; and 66 people in 2014. Martinez offered the following interpretation of the data: "These small amounts of extraditions clearly show that only the most serious of criminal cases are approved for extradition from Mexico to the United States." Based on his training, knowledge and experience, Martinez opined that "it would be impractical, and unfeasible, to have [defendants] extradited from Mexico to the United States on these current charges." As a result, he concluded the

district attorney's office "is unable to make an election to extradite [defendants] at this time."

In January 2017, Surety filed its replies to the oppositions. Surety argued the information it provided to the district attorney's office satisfied the requirements of section 1305, subdivision (g) and County had not met its burden of proving extradition was infeasible. Surety supported its replies with additional declarations from an investigator who met with the three defendants in Mexico and had participated in the extradition of other defendants from Mexico. The investigator also described five cases arising in the County of Santa Clara in which Mexican nationals were extradited from Mexico based on investigations and identification affidavits completed by Golden State Investigations.

Decision and Appeal

On January 10, 2017, the trial court heard the parties' oral argument, took the case under submission, and set a hearing on February 10, 2017. At the February 10, 2017, hearing, the court issued its ruling from the bench. The court denied the motions to exonerate the bond, finding "it was not feasible to extradite any of the three defendants in the case."

On February 27, 2017, the trial court entered summary judgment on all three bonds. Surety appealed.

DISCUSSION

I. OVERVIEW OF THE BAIL STATUTES

A. Nature of Bail Bonds

Bail bonds are regarded as a contract between the government and the surety. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 657.) Consequently, bail bond proceedings are civil in nature and independent from and collateral to the criminal prosecutions. (*Ibid.*) The object of bail and the incentive

created by its possible forfeiture is to ensure the appearance of the defendant. (*Ibid.*) Bail's purpose is not to generate revenue for the state or to punish the surety. (*Ibid.*) Despite the contractual nature of a bail bond, the forfeiture and exoneration of bail is entirely a statutory procedure. (*People v. Ranger Ins. Co.* (1998) 66 Cal.App.4th 1549, 1552.)

B. Forfeiture

Section 1305 governs the forfeiture of bail. When a criminal defendant released on bail fails to appear without sufficient excuse, the trial court must declare that the undertaking of bail is forfeited in open court. (§ 1305, subd. (a).) After the court's declaration of forfeiture, the next procedural step is for the court clerk to serve notice of the forfeiture on the surety and its bail agent within 30 days. (§ 1305, subd. (b).)

C. Appearance Period and Its Extension

The surety is given 185 days from the date the notice of forfeiture is mailed (180 days plus five days for service by mail) to produce the defendant in the court where the case is located and have the forfeiture set aside. (§ 1305, subs. (b)(1), (c)(1); *People v. Western Ins. Co.* (2012) 204 Cal.App.4th 1025, 1030.) The 185-day period is known as the exoneration period or the appearance period.

The appearance period may be extended. Sureties and bail agents may seek an extension by filing a motion, based upon good cause, for an order extending the period. (§ 1305.4.) The motion must be supported by an affidavit or declaration setting forth the reasons showing good cause for the extension. (*Ibid.*) "The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days *from its order.*" (*Ibid.*, italics added.) "This language plainly measures the allowable period of extension from the date of the trial court's extension order, not from the end date of the initial appearance period." (*People v. Financial Casualty & Surety, Inc.* (2016) 2 Cal.5th 35, 43.) In this appeal, Surety argues the trial court violated the plain

language of section 1305.4 that governs the length of the extension of the appearance period.

D. Exoneration

Besides producing the defendant in the court, section 1305 identifies other circumstances that require the trial court to vacate the forfeiture of bail and exonerate the bond. (*People v. Western Ins. Co.*, *supra*, 204 Cal.App.4th at p. 1030.) In this appeal, Surety relies on subdivision (g) of section 1305, which provides in full:

“In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.”²

Subdivision (g) was added to section 1305 in 1995. (Stats. 1995, ch. 434, § 1.) It became effective on January 1, 1996. (*County of Los Angeles v. Ranger Ins. Co.* (1996) 48 Cal.App.4th 992, 997.) “That subdivision lays out three prerequisites to the vacatur for a defendant ‘not in custody’ in a foreign jurisdiction: (1) that the defendant be ‘temporarily detained ... by the bail agent ... in the presence of a local law enforcement officer’; (2) that the local officer in a sworn affidavit ‘positively identif[y]’ the defendant; and (3) that the ‘prosecuting agency elect[] not to seek extradition after being informed

² The other subdivision of section 1305 that addresses circumstances where the prosecuting attorney elects not to seek the extradition is subdivision (f) of section 1305, which states: “In all cases where a defendant *is in custody* beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.” (Italics added.)

of the location of the defendant.’ (§ 1305, subd. (g).)” (*People v. Financial Casualty & Surety, Inc.* (2017) 10 Cal.App.5th 369, 382 (*Financial Casualty*).)

In *County of Orange v. Ranger Ins. Co.* (1998) 61 Cal.App.4th 795 (*County of Orange*), the Fourth District considered the third prerequisite for relief and addressed “what happens when extradition is not a feasible option for the prosecuting agency?” (*Id.* at p. 802.) The court considered and rejected the possibility that the infeasibility of extradition was the equivalent of the prosecuting agency electing not to seek extradition and, therefore, satisfied the third prerequisite. (*Ibid.*) The court concluded that “[w]hen extradition is not feasible, there can be no meaningful election whether to seek extradition, and the conditions for forfeiture relief have not been satisfied.” (*Ibid.*)

E. Summary Judgment against the Surety

If the surety does not obtain relief from the forfeiture within the appearance period, including extensions, section 1306 provides for the entry of a summary judgment against the surety on the bond. Under section 1306, subdivision (a), when “the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture shall enter a summary judgment” against the surety in “the amount of the bond plus costs.” The summary judgment must be entered within 90 days of the expiration of the exoneration period. (§ 1306, subd. (c).) If summary judgment is not entered within the 90-day period, “the right to do so expires and the bail is exonerated.” (§ 1306, subd. (c).)

F. Construing the Bail Statutes

The law disfavors forfeitures in general and bail forfeitures in particular. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 714.) Thus, the statutes governing bail are strictly construed to avoid forfeiture. (*Ibid.*) This policy of strict construction to avoid forfeitures protects the surety “and more importantly the individual citizens who pledge to the surety their property on behalf of persons seeking release from custody”

(*County of Los Angeles v. Surety Ins. Co.* (1984) 162 Cal.App.3d 58, 62.) However, “[t]he policy disfavoring forfeiture cannot overcome the plainly intended meaning of the statute.” (*People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301, 308.)

G. Standard of Review

Ordinarily, appellate courts review an order denying a motion to vacate the forfeiture of a bail bond under an abuse of discretion standard. (*People v. International Fidelity Ins. Co.* (2012) 204 Cal.App.4th 588, 592.) The abuse of discretion standard is not a single, unified standard. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.) The deference it calls for varies according to the particular determination by the trial court under review. (*Ibid.*) When the appellate court is deciding only legal issues, it conducts an independent review. (*People v. International Fidelity Ins. Co.*, *supra*, at p. 592.) Questions of statutory interpretation are legal issues and, thus, subject to independent review. (*Ibid.*) Similarly, the application of a statutory provision to undisputed facts is subject to independent review. (*Ibid.*) In contrast, when there are factual disputes, the trial court’s findings of fact will be upheld if those findings are supported by substantial evidence. (*People v. Accredited Surety Casualty Company* (2014) 230 Cal.App.4th 548, 555.)

II. VALIDITY OF EXTENSION ORDER AND NOTICE

Surety’s first claim of error involves the trial court’s order extending the appearance period to December 14, 2016. Extensions are governed by section 1305.4.

A. Background

1. *Surety’s Motion for Extension*

On June 17, 2016, Surety filed three motions to extend the initial appearance period pursuant to section 1305.4. The motions asserted the bail agent had exercised diligence in attempting to apprehend and return defendants to custody and there was a reasonable likelihood that defendants would be apprehended if an extension was granted.

Declarations of investigators hired by the bail agent were attached to support the motion. Surety also filed proposed orders granting the extension, which included blanks to be completed by the court specifying the length of the extension and the expiration date of the extended appearance period.

One of the declarations was from Juan Sandoval, a licensed bail agent employed by Golden State Investigations in San Jose, California. In Sandoval's search for defendants, he used Froilan Lozada Guerrero, an attorney located in Mexico. In a previous bail bond case, Guerrero worked with Sandoval to locate a person in Mexico for the purpose of completing the identification affidavit referred to in subdivision (g) of section 1305. On June 1, 2016, Guerrero phoned Sandoval to report (1) he had made contact with family members and (2) a sister of one of the defendants wanted to consult the family attorney about the identification affidavit process before scheduling a meeting for Guerrero and the three defendants. On June 9, 2016, Guerrero met with the three defendants and their attorney at their residence. The defendants cooperated with the completion of the identification affidavits. Guerrero sent the original affidavits to Sandoval by Federal Express and copies were attached to Sandoval's declaration.

County responded by filing notices of nonappearance and no opposition to extend time. County's notices stated: "The court should extend the time for no longer than 180 days after the hearing on the motion."

2. Hearing and Orders

On July 15, 2016, the trial court held a hearing on Surety's motion to extend the appearance period. Surety's arguments on appeal rely heavily on what was said at that hearing. Consequently, we set forth the entire exchange that occurred after the case was called and counsel entered his appearance:

"THE COURT: Okay. And the request in this case is to extend the period for the bail bond for 180 days?

"MR. CHEN: Correct.

“THE COURT: The original forfeiture letter is dated December 15, 2015. So the initial 180-day period extended by an additional 180 days comes out, by my calculation, to December 14, 2016. That’s approximately five months from today.

“MR. CHEN: Yes ma’am.

“THE COURT: I will grant the order extending it until December 14, 2016, in each case and I have signed the proposed orders.

“MR. CHEN: Thank you.

“THE COURT: For the record, county counsel did not oppose. Non-appearance and no opposition.

“MR. CHEN: Correct for all three.”

The proposed orders referred to by the court had been prepared by counsel for Surety and were included with the moving papers. The proposed orders, which included blanks relating to the length of the extensions, stated: “The 180 day appearance period is extended by an additional period of ____ days from the date of this order to _____.” As completed by the court, the orders stated: “The 180 day appearance period is extended by an additional period of 150 days from the date of this order to Dec 14 2016.”

B. Contentions

Surety’s claim that the summary judgments entered on the bail bonds are invalid or void and, therefore, the bail bonds were exonerated by operation of law, has three steps. First, Surety argues the July 15, 2016, orders extending the appearance periods were invalid. Second, because there were no valid extensions, the time for entering summary judgment on each bond began to run at the end of the original 185-day appearance period (i.e., June 17, 2016). Third, the 90-day period for entering the summary judgments specified in subdivision (c) of section 1306 expired well before the summary judgments were entered on February 27, 2017, and, as a result, the right to enter summary judgment expired “and the bail is exonerated.” (§ 1306, subd. (c).)

One dispute in this appeal focuses on the first step and whether the July 15, 2016, orders extending the appearance periods to December 14, 2016, were invalid. Surety's theory of invalidity asserts (1) the trial court miscalculated the extension and short-changed Surety out of an additional 28 days and (2) this miscalculation resulted in a defective notice of the actual time the extension should have allowed for the surrender of defendants. Surety summarizes its argument as follows:

“Given the extension order was issued on July 15, 2016, the 180 days of extension time that was granted by the trial court should have set the deadline for the surety's performance on January 11, 2017, rather than December 14, 2016. Because there was defective notice of the resulting deadline under Penal Code Section 1305.4, the underlying extension order was rendered a nullity, and the trial court thereafter lacked jurisdiction to enter summary judgment.”

In addition, Surety argues that the trial court erred in determining at the February 16, 2017, hearing that (1) there was no miscalculation of the extension and (2) its extension order complied with section 1305.4. The court reasoned it had complied with the statute because “I was careful not to go beyond the 180 days and I told everybody how I was calculating it, and there was no objection.”

C. Analysis

1. *Compliance with Section 1305.4*

We begin with the legal question of whether the trial court complied with section 1305.4. The maximum length of an extension of the appearance period is governed by the sentence in section 1305.4 stating: “The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order.” The use of the term “may order” indicates that the exact length of the extension is committed to the trial court discretion. The phrase “time not exceeding 180 days from its order” specifies the maximum length of the extension, which trial courts have no authority to exceed.

Surety relies on our statement that “the extension period under section 1305.4 is counted from the date of the order.” (*People v. United States Fire Ins. Co.* (2015) 242 Cal.App.4th 991, 1008.) Surety argues the trial court erred by using the wrong start date for the extension and that start date is specifically identified in section 1305.4 as the date of the extension order. In Surety’s view, the trial court’s calculation violated the plain language of section 1305.4. We disagree.

First, our decision in *People v. United States Fire Ins. Co.*, *supra*, 242 Cal.App.4th 991 does not hold a trial court granting an extension *must* always calculate the extension from the date of the order. In that case, we addressed a question about the maximum length of the extension and whether a summary judgment was premature. (*Id.* at p. 1008.) We concluded more time was available for a further extension when the surety filed its second extension motion because the first extension had not used up all 180 days allotted for extensions. (*Id.* at p. 1009.) Our determination that more time was available was based on the *maximum* period of the extension authorized by the statute. Our statement that the extension period under section 1305.4 is counted from the date of the order, when read in context, establishes only how to determine the maximum extension available. We did not identify how a trial court must exercise its discretion when calculating an extension shorter than the maximum allowed. Therefore, we conclude our decision in *People v. United States Fire Ins. Co.* did not require the trial court in this case to calculate the extension granted from the date of its order.

Second, contrary to Surety’s argument, we conclude the trial court’s calculation of the extension did not violate the plain language of section 1305.4. The text states the court “may order the period extended to a time not exceeding 180 days from its order.” (§ 1305.4.) Here, the trial court’s order complies with this text. The court did not order the period extended to a time exceeding 180 days from its order. The extension to December 14, 2016, was 152 days after the date of the order (i.e., July 15, 2016)—an amount of time well within the statutory maximum.

Therefore, we reject Surety's argument that the trial court's order failed to comply with the requirements of section 1305.4.

2. *Intention of the Trial Court*

In addition, Surety makes the factual claim that the trial court intended to grant the maximum 180-day extension available under section 1305.4. Surety argues it was never served with the signed orders and the trial court clearly stated on the record that it was granting a 180-day extension.

We disagree with this factual claim about intent because it is not supported by the reporter's transcript of the July 15, 2016, hearing. During the hearing, the court referred to "the initial 180-day period [being] extended by an additional 180 days," which the court expressly stated, by its calculation, came out to December 14, 2016. The court then stated, "That's approximately five months from today." This reference to five months, coupled with the identification of the specific expiration date, establishes the trial court's intent to grant an extension to December 14, 2016, rather than to grant the maximum possible extension.

Moreover, the trial court did not "secretly" intend to grant only a 150-day extension. The court's intention as to the length of the extension was stated during the hearing, it was not secret. From one starting point, the extension granted could be described as a 180-day extension. From another starting point (i.e., the day of the hearing), it could be described as approximately five months. The court plainly announced the appearance period would be extended to approximately five months from the date of the hearing. The court's choice of the December 14, 2016, expiration date was consistent with its estimate of five months. Had the trial court actually said it was going to grant the maximum extension, there might have been an internal inconsistency and a question about what the court intended. The court, however, never stated it was going to grant the maximum extension authorized by law. Our review of the reporter's

transcript of the July 15, 2016, hearing and the orders signed by the trial court has revealed no internal contradiction as to the court's intent.³

3. *Defective Notice*

Based on our analysis of the statutory requirements and the trial court's intent, we conclude the notice of the extension provided to Surety was not defective. The reporter's transcript establishes counsel for Surety had actual notice of the new expiration date of the appearance period. Furthermore, counsel for Surety acted on this information by filing the motions to vacate the forfeiture and exonerate bail on December 14, 2016, the expiration date established by the extension orders.

In summary, we reject Surety's contention that the trial court (1) intended to grant the full 180-day extension requested and (2) erroneously measured the extension from the end of the initial 185-day appearance period.

III. INFEASIBILITY OF EXTRADITION AND DUE PROCESS

A. Legal Background

1. *Election Not to Extradite*

As described in part I.D., *ante*, one of the prerequisites to obtaining relief from bail forfeiture under subdivision (g) of section 1305 is an election by "the prosecuting agency ... not to seek extradition after being informed of the location of the defendant." This statutory language presents an interesting wrinkle because it requires an affirmative act (i.e., an election) not to take action (i.e., seek extradition). Published appellate decisions distinguish between (1) a failure to seek extradition based on an affirmative choice by a district attorney and (2) a failure to seek extradition because no decision has been made one way or the other. In particular, the text of subdivision (g) of section 1305 has been interpreted to mean the prerequisite is satisfied only if the prosecuting agency

³ The fact that the orders stated the extensions were 150 days instead of 152 days is immaterial as the date of December 14, 2016, is the controlling deadline because it is more specific and it provides for a longer extension.

has made an *affirmative* selection among a choice of options. (*Financial Casualty, supra*, 10 Cal.App.5th at p. 379.)

California cases also have addressed the timing of the prosecuting agency's decision on whether or not to seek extradition. "[C]ourts have consistently read subdivision (g) of section 1305 as leaving the timetable ... for deciding whether to extradite squarely in the hands of the prosecuting agency." (*Financial Casualty, supra*, 10 Cal.App.5th at p. 380.) In other words, the statute "does not obligate the prosecuting agency to decide whether to extradite by a certain deadline." (*Id.* at p. 381.) Thus, if a surety submits the affidavit required by subdivision (g) of section 1305 and requests "a decision on extradition too close to the end of the appearance period," a prosecuting agency is not obligated to decide whether to extradite the defendant before that period expires. (*Id.* at p. 384, citing *People v. Tingtungco* (2015) 237 Cal.App.4th 249, 256–259.)

The absence of an express timetable or deadline does not mean prosecuting agencies have an absolute right to ignore information and affidavits presented under subdivision (g) of section 1305. When handling the decision whether to seek extradition, a prosecuting agency cannot act in actual bad faith. (*Financial Casualty, supra*, 10 Cal.App.5th at p. 381 ["no evidence that the prosecutor's office in this case has acted in actual bad faith"].) Surety has cited, and we have located, no appellate decision concluding the prosecuting agency acted in bad faith by dragging its feet in deciding whether or not to seek extradition.

2. *The Feasibility of Extradition*

Another question of statutory interpretation involving the phrase "the prosecuting agency elects not to seek extradition" centers on the meaning of the word "elects." In *County of Orange*, the Fourth District stated the term "elect" implies a choice of options and, therefore, means "the prosecutor will have the option whether or not to seek

extradition.” (*County of Orange, supra*, 61 Cal.App.4th at p. 802.) The court concluded: “When extradition is not feasible, there can be no meaningful election whether to seek extradition, and the conditions for forfeiture relief [stated in subdivision (g) of section 1305] have not been satisfied.” (*Ibid.*)

The Fourth District interpreted section 1305, subdivision (g) so that it would “not require the government to undertake futile acts. (See generally, Civ. Code, § 3532 [‘The law neither does nor requires idle acts.’].)” (*County of Orange, supra*, 61 Cal.App.4th at p. 803.) The court explained the concept of feasibility by stating “[e]xtradition will be deemed infeasible when the host country, as a matter of policy and practice, refuses to grant extradition requests in the category of cases involved in the controversy at hand.” (*Ibid.*) Because a country’s extradition policies and practice are subject to change, the court stated: “Each case must be evaluated individually to determine the feasibility of obtaining extradition under the circumstances presented.” (*Id.* at p. 804, fn. 5.)⁴

Consistent with the Fourth District’s discussion of feasibility, subsequent decisions have recognized the feasibility of extradition in a particular case is a question of fact. (*County of Los Angeles v. Fairmont Specialty Group* (2009) 173 Cal.App.4th 538, 544.) The government bears the burden of proving extradition is not feasible. (*County of Orange, supra*, 61 Cal.App.4th at p. 803.)⁵ A trial court’s finding on the feasibility of

⁴ In *County of Orange*, the trial “court stated it is ‘common knowledge’ extradition requests for Mexican nationals are ‘futile acts’ and ‘there is no, quote, unquote, “extradition back”” from Mexico.” (*County of Orange, supra*, 61 Cal.App.4th at p. 799.) Here, County’s appellate brief misquotes this statement to support its argument that extradition of the defendants from Mexico was not feasible. The statement by the Orange County Superior Court was made over 20 years before Surety’s motion to vacate forfeiture was filed. While it may provide historical information as to the policies and practices of Mexico in the 1990’s, the statement is not relevant to the policies and practices adhered to by Mexico in 2016. Accordingly, the statement is entitled to no weight when considering whether County carried its burden of proof.

⁵ Evidence Code section 500 states that “a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense

extradition is reviewed on appeal under the substantial evidence test. (*Fairmont, supra*, at p. 543.) Surety has not challenged the sufficiency of the evidence supporting the trial court’s finding of fact that extradition of the three defendants was not feasible.

Accordingly, we do not undertake a substantial evidence review of that finding.

B. Due Process Requirements

1. *Surety’s Contentions*

Surety contends the district attorney violated its due process rights by failing to provide it with notice of the rationale for the determination that extradition of the criminal defendants from Mexico was not feasible. Surety argues that this due process violation renders the summary judgments void based on a lack of jurisdiction. Surety asserts the district attorney’s office did not provide an explanation of its determination for more than six months, which deprived Surety of an opportunity to review and address the reasons. Instead, those reasons were first provided in the oppositions to Surety’s motions to vacate forfeiture, which oppositions were filed on December 30, 2016.

2. *Basic Principles of Procedural Due Process*

Both the federal and state constitutions include a due process clause. Section 1 of the Fourteenth Amendment to the United States Constitution provides that no state shall “deprive any person of ... property, without due process of law” Article I, section 7, subdivision (a) of the California Constitution states in relevant part: “A person may not be deprived of ... property without due process of law” These requirements for procedural due process impose constraints on governmental decisions that deprive individuals of interests that constitute “property.” (*Mathews, supra*, 424 U.S. at p. 332.)

he is asserting.” Accordingly, when a county or district attorney asserts the infeasibility of extradition as a defense or justification for failing to make the election described in subdivision (g) of section 1305, the county or district attorney bears the burden of proof as to infeasibility.

“The essence of due process is simply notice and opportunity to be heard.” (*San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 (*San Bernardino*).) The opportunity to be heard must occur ““at a meaningful time and in a meaningful manner.”” (*Mathews, supra*, 424 U.S. at p. 333.) In some circumstances, procedures and remedies that are available only after the deprivation of property has occurred are adequate to satisfy the requirements of due process. (E.g., *Hudson v. Palmer* (1984) 468 U.S. 517; *Parratt v. Taylor* (1981) 451 U.S. 527 [post-deprivation procedures and remedies under Nebraska’s tort claims law satisfied due process]; *Barnett v. Centoni* (9th Cir. 1994) 31 F.3d 813, 816–817 [California’s Government Claims Act provided adequate post-deprivation remedy for the loss of property alleged by inmate; inmate’s claim that he was deprived of property in violation of due process rights was properly dismissed].)

Due process is flexible and its protections must be tailored to the demands of a particular situation. (*Mathews, supra*, 424 U.S. at p. 334.) Determining what those demands are involves the consideration of the governmental and private interests affected. (*Ibid.*) In *Mathews*, the United States Supreme Court adopted a balancing test for the “identification of the specific dictates of due process” that considers three factors. (*Id.* at p. 335.) “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Ibid.*)

3. *Notice and an Opportunity to be Heard*

There is no question that Surety was provided with “notice and opportunity to be heard” (*San Bernardino, supra*, 74 Cal.App.4th at p. 936) on the issue of the feasibility of

extraditing defendants from Mexico. County's oppositions to Surety's December 14, 2016, motions to vacate the forfeiture and exonerate bail clearly raised the issue of the feasibility of extradition. County asserted the conditions for forfeiture relief were not satisfied because extradition was not feasible, and the district attorney had no duty to undertake futile acts. Surety's replies, filed on January 6, 2017, addressed the feasibility of extradition. Surety argued County had the burden of proof and the extradition of Mexican nationals had increased substantially since 2001.

On January 10, 2017, the trial court heard arguments on the motions to vacate the forfeiture and exonerate bail. On February 10, 2017, the trial court stated its ruling from the bench: "The motion to exonerate is denied. Based on the declaration of Investigator Martinez and the facts and circumstances of this case, the Court finds that it was not feasible to extradite any of the three defendants in this case." Therefore, we conclude Surety was provided with some notice and an opportunity to be heard on the issue of the feasibility of extradition.

4. Meaningful Notice

Surety recognizes it received some notice before the hearing. Consequently, Surety contends due process requires that it be provided sufficient information and detail to allow it "to respond at a meaningful time and in a meaningful manner." Surety argues that the notice must be such it provides for "a fair opportunity to redress errors made by the District Attorney and/or to cure any defects." Surety argues it did not receive timely notice of the reasons supporting the district attorney's determination of infeasibility, which deprived it of any meaningful opportunity to address the determination before the expiration of the appearance period.

Surety's arguments about meaningful, timely notice present this court with a question of first impression. Surety had cited, and this court has located, no published decision addressing whether due process requires notice to the surety of a prosecuting

agency's determination that extradition is not feasible before the expiration of the appearance period. It follows that we have located no decision addressing the more specific legal question about *notice of the reasons or rationale* for a prosecuting agency's infeasibility determination.

In the absence of specific precedent addressing the notice proposed by Surety, we resolve its due process arguments by applying the *Mathews* balancing test described in part III.B.2 of this opinion. (*People v. Swink* (1984) 150 Cal.App.3d 1076, 1082 (*Swink*) [after balancing interest, court concluded notice of forfeiture provided under former § 1305 violated due process rights of person who posted cash bail for the accused].) Although the parties' appellate briefing has addressed the due process arguments raised by Surety, neither side has explicitly mentioned the *Mathews* balancing test and addressed all of its factors.

The first factor is the private interests affected by the official action—that is, the determination that extradition is not feasible in the particular case. In bail bond cases, there are two levels of private interests. There is the surety's interest in the possible exoneration of the bond. In addition, there is the interest of the persons who pledge to the surety their property on behalf of persons seeking release from custody. (See *County of Los Angeles v. Surety Ins. Co.*, *supra*, 162 Cal.App.3d at p. 62.)

The second factor is the risk of an erroneous deprivation and the efficacy of additional procedural safeguards in reducing that risk. Here, the relevant risk relates to an erroneous feasibility determination, which would deprive the surety of an exoneration in situations where the surety has established the other requirements set forth in subdivision (g) of section 1305.

The third factor is the interests of the prosecuting agency. An evaluation of those interests includes how the prosecuting agency would be impacted by the additional procedural safeguards. Impacts include the financial and administrative burdens

associated with the additional safeguards and how those safeguards would affect the agency's other functions.

An assessment of the risk of an erroneous feasibility determination should consider the procedural context in which the feasibility issue is decided and the procedural safeguards already in place. The prosecuting agency's determination of the feasibility of extradition is not a final, binding administrative decision⁶ subject to limited judicial scrutiny. (See generally, *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575–576 [continuum of judicial deference when reviewing administrative decisions].) Instead, the question of feasibility is resolved by the trial court in its role as the trier of fact and the burden of proof is allocated to the prosecuting agency. Before the trial court decides that question of fact, sureties have the opportunity to (1) file a reply to any opposition of the prosecuting agency that raises the infeasibility of extradition and (2) present arguments at a hearing. After the hearing, the trial court's finding of fact is subject to appellate review under the substantial evidence standard. These procedures mean that sureties and pledgees are not deprived of a property interest based on a final administrative decision of a prosecuting agency. Instead, they have the many procedural protections afforded by the judicial proceeding that resolves the question of the feasibility of extradition. Among other things, these procedures protect against erroneous feasibility determinations.

Surety addresses the efficacy of its proposed notice requirement by arguing that receiving notice of the prosecuting agency's rationale would provide it with an opportunity to redress errors by the prosecuting agency and cure potential defects by

⁶ The significance of the finality of a decision or proceeding is illustrated by the following statement: “An elementary and fundamental requirement of due process in any proceeding *which is to be accorded finality* is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314, italics added.)

submitting further information to the agency. In the circumstances of this case, Surety was informed of the prosecuting agency's concern about the feasibility of extraditing the defendants from Mexico in early August 2016. Surety's counsel received an email from Martinez on August 2, 2016, stating "there are parameters within the United States-Mexico Extradition Treaty which would make an election unfeasible." While Surety argues the statement was ambiguous because the "parameters" were not identified, the statement provided Surety with notice that (1) feasibility was a concern and (2) the concern involved the terms of the United States-Mexico Extradition Treaty. The terms of the treaty and Mexico's policies in exercising the discretion provided by those terms are not something Surety could have changed by receiving a more detailed information from Martinez.⁷ As a result, we conclude the efficacy of the proposed detailed notice requirement in reducing error would have been minimal in this case.

Weighed against the efficacy of the proposed procedure in preventing errors is the additional burden it would place on the government agency. Here, that burden is not minimal. First, the notice proposed by Surety would require the preparation and delivery of a document not otherwise required. As a result, it is distinguishable from the due process requirement imposed in *Swink*. That case involved only a change in contents of an existing notice and the court concluded "the cost of modifying the letter notice is de minimis." (*Swink, supra*, 150 Cal.App.3d at p. 1082.) Second, the notice proposed by Surety is burdensome in the sense that it would accelerate the prosecuting agency's evaluation of extradition requests. "We hesitate to read into section 1305 constraints on the prosecuting agency's decisionmaking process when our Legislature has declined to do so." (*Financial Casualty, supra*, 10 Cal.App.5th at p. 380.) Similarly, we are reluctant to create new notice requirements based on procedural due process when the

⁷ The terms of the treaty and the policies adopted by Mexico are not described in this opinion because Surety has not challenged the finding of fact that extradition of Oscar, Adolfo and Gabriel was infeasible.

procedures in place already provide for notice, an opportunity to be heard, and the allocation of the burden of proof to the prosecuting agency.

Based on our weighing of the factors relevant to the *Mathews* balancing test, we conclude procedural due process does not require prosecuting agencies to give sureties notice of their determination that extradition is not feasible, along with notice of the rationale for the infeasibility determination, prior to the end of the appearance period.

In summary, Surety has not demonstrated that the trial court committed legal or factual error in denying the motions to vacate the forfeiture of the bonds. Therefore, we conclude the summary judgments were properly entered.

DISPOSITION

The judgments are affirmed. Respondent shall recover its costs on appeal.

FRANSON, Acting P.J.

WE CONCUR:

PEÑA, J.

DESANTOS, J.